

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRADLEY MARSHALL,) Case No. CV-11-5319 SC
)
Plaintiff,) ORDER RE: MOTION FOR LEAVE
) TO PROCEED
v.)
)
WASHINGTON STATE BAR ASSOCIATION,)
et al.,)
)
Defendants.)
)
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I. INTRODUCTION

This matter comes before the Court on Plaintiff Bradley Marshall's motion for permission to proceed with an adversary complaint against the Washington State Bar Association ("WSBA") in federal bankruptcy court and a legal malpractice action against Kurt Bulmer in the King County Superior Court. ECF No. 100 ("Mot."). WSBA has opposed the Motion and Mr. Marshall has filed a reply. ECF Nos. 102 ("Opp'n"), 106 ("Reply"). The Court finds this matter appropriate for determination without oral argument. As detailed below, the Court DENIES the Motion as it pertains to the bankruptcy action and issues sanctions against Mr. Marshall for unreasonably and vexatiously multiplying proceedings.

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1 **II. BACKGROUND**

2 Mr. Marshall, formerly an attorney, was charged with
3 misconduct by WSBA and ultimately disbarred by the Washington State
4 Supreme Court in 2009. See ECF No. 79 ("May 23 Order") at 3-5.
5 Between 2009 and 2011, Mr. Marshall filed three collateral attacks
6 challenging the conduct of his disbarment proceedings. Mr.
7 Marshall's first collateral attack was filed in the Western
8 District of Washington and was dismissed with prejudice after the
9 district court determined that it lacked jurisdiction to intervene
10 in an ongoing disciplinary action. Id. at 7.

11 Mr. Marshall's second collateral attack was filed in federal
12 bankruptcy court. Id. at 7-9. Mr. Marshall's adversary complaint
13 in that action alleged that his rights to a fair and impartial
14 hearing were violated because his WSBA hearing officers were
15 biased. Id. Though the issue was not raised in Mr. Marshall's
16 amended complaint, later motion practice and appeals revealed that
17 Mr. Marshall's aim was to avail himself of the automatic stay
18 imposed under the Bankruptcy Code to prevent the Washington Supreme
19 Court from disbarring him. Id. at 8. The bankruptcy court found
20 that "there was no stay violation in the disciplinary proceeding"
21 and that Mr. Marshall's claims were otherwise barred by the Rooker-
22 Feldman doctrine and claim and issue preclusion. ECF No. 68-6 at
23 50, 58. The bankruptcy court's ruling was affirmed by the district
24 court and the Ninth Circuit, which categorized Mr. Marshall's
25 litigation as "vexatious and wasteful." May 23 Order at 9;
26 Marshall v. Wash. State Bar Ass'n, 448 Fed. Appx. 661, 663 (9th
27 Cir. 2011).

28 Mr. Marshall's third collateral attack was filed with this

1 Court, and it looked much like his first two. Mr. Marshall's suit
2 targeted WSBA and fifty-three other defendants, claiming that their
3 conduct during his disbarment proceedings violated his due process
4 and equal protection rights, among other things. ECF No. 1. On
5 May 23, 2011, the Court granted the defendants' motions for
6 judgment on the pleadings, finding that Mr. Marshall's claims were
7 barred by res judicata and the Rooker-Feldman Doctrine, among other
8 things. In light of Mr. Marshall's prior actions, the Court
9 designated Mr. Marshall as a vexatious litigant and entered this
10 Pre-Filing Order:

11
12 Should Marshall wish to file any future claims in this
13 District against any Defendant in this action, whether
14 individually or in any combination thereof, each filing
15 shall be preceded by a Motion for Leave. The Motion for
16 Leave shall contain a certification under Federal Rule of
17 Civil Procedure 11 providing the factual and legal basis
18 for the claim and the specific reason(s) why it falls
19 outside the scope of this Order, and shall be accompanied
20 by a copy of the pleading or document Marshall seeks
21 leave to file. . . . This pre[-]filing order shall apply
22 only to future claims that are directly or indirectly
23 related to Marshall's disbarment or the disciplinary
24 proceedings described above.

19 Id. at 28-29.

20 After the Pre-Filing Order was entered, Mr. Marshall continued
21 to assert legal challenges related to his disciplinary proceedings.
22 On June 29, 2012, Mr. Marshall filed an action against "Kurt
23 Bulmer, et al" in King County Superior Court (the "Bulmer Action"),
24 Case No. 12-2-23116-8 SEA. ECF No. 103 Ex. A. Though only Mr.
25 Bulmer is named in the caption, the text of the complaint indicates
26 that Mr. Marshall also intended to sue a number of the defendants
27 named in his other collateral attacks, including WSBA and the
28 Washington State Supreme Court. Id. ¶¶ 3-4. Mr. Marshall later

1 amended the complaint so as to only name Mr. Bulmer, as well as a
2 number of John and Jane Does. Mot. Ex. 2. It appears that Mr.
3 Bulmer represented Marshall at the hearing stage of the
4 disciplinary proceedings that resulted in his disbarment. See id.
5 Mr. Marshall alleges that Mr. Bulmer conspired with the hearing
6 officer at his disciplinary proceedings with the intent of bringing
7 about his suspension and ultimate disbarment. Id. ¶ 17.

8 Several months later, on September 10, 2012, Mr. Marshall
9 filed a second adversary complaint against WSBA in the bankruptcy
10 court for the Western District of Washington, Bankruptcy Case No.
11 09-14944, his fourth collateral attack in federal court. Mot. Ex.
12 1 ("Adversary Complaint"). As in the second collateral attack, the
13 Adversary Complaint asserts that WSBA's disciplinary proceedings
14 against Mr. Marshall violated the automatic bankruptcy stay because
15 they were not excluded from the reach of the stay and because the
16 proceedings "were conducted in [a] fraudulent and bad faith manner
17 by a non-governmental unit." Id. at 3.

18 On September 24, 2012, Mr. Marshall filed the instant Motion,
19 asking for permission to proceed with the Bulmer Action and the
20 Adversary Complaint in accordance with the Pre-Filing Order. The
21 Motion was filed after Mr. Marshall filed the Bulmer Action and the
22 Adversary Complaint. WSBA has opposed the Motion, arguing that
23 both the Bulmer Action and the Adversary Complaint constitute
24 impermissible attempts to re-litigate matters that were already
25 settled in Mr. Marshall's three prior collateral attacks.

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1 III. DISCUSSION

2 A. The Bulmer Action

3 The Court finds that the Bulmer Action falls outside the scope
4 of the Pre-Filing Order. That order only applies to claims filed
5 in this "District," meaning the Western District of Washington. In
6 the interests of federalism and comity with the state courts, the
7 Court did not intend for the Pre-Filing Order to apply to state
8 court proceedings. As such, Mr. Marshall was not required to seek
9 leave of the Court prior to filing the Bulmer Action.

10 B. The Adversary Complaint

11 The Court reaches a different conclusion with respect to Mr.
12 Marshall's Adversary Complaint in bankruptcy court. Mr. Marshall
13 asserts that the Adversary Complaint necessarily falls outside the
14 scope of the Pre-Filing Order because bankruptcy courts have
15 exclusive jurisdiction over claims concerning an alleged violation
16 of the bankruptcy stay. Mot. at 5. Mr. Marshall cites a number of
17 cases which stand for the uncontroversial proposition that
18 bankruptcy courts have jurisdiction over cases under Title 11 of
19 the United States Code, including claims for violations of the
20 automatic bankruptcy stay under 11 U.S.C. § 362(k). See id. at 4-
21 5; Reply at 4. However, none of these cases suggest that the
22 bankruptcy courts alone have exclusive jurisdiction over such
23 matters. See, e.g., In re Aheong, 276 B.R. 233, 239-45 (B.A.P. 9th
24 Cir. 2002).

25 Moreover, under 28 U.S.C. § 1334(a), district courts, like
26 this one, have "original and exclusive of all cases under title
27 11." Further, under § 1334(b) district courts have "original but
28 not exclusive jurisdiction of all civil proceedings arising under

1 title 11, or arising in or related to cases under title 11." 28
2 U.S.C. § 1334(b). Thus, the undersigned, presiding by designation
3 in the Western District of Washington, may properly exercise
4 jurisdiction over Mr. Marshall's claims under, arising in, or
5 related to his bankruptcy.

6 Mr. Marshall's Adversary Complaint also falls squarely within
7 the scope of the Court's Pre-Filing Order. The Complaint was filed
8 in the Western District of Washington; it was filed against WSBA,
9 one of the defendants in Mr. Marshall's third collateral attack;
10 and it concerns claims that are directly related to Mr. Marshall's
11 disbarment and disciplinary proceedings. See May 23 Order at 28-
12 29; Adversary Complaint at 3-4.

13 The Court finds that Mr. Marshall has failed to offer a
14 coherent factual or legal basis for why his Adversary Complaint is
15 not controlled by the previous rulings in his three prior
16 collateral attacks. Mr. Marshall argues that "[t]he claims are
17 different and the people are different." Mot. at 6. But that
18 clearly is not true. With respect to the "people," Marshall has
19 sued WSBA three times before. See May 23 Order at 6-11.

20 Further, the Adversary Complaint raises the same issues that
21 were addressed and rejected in Mr. Marshall's three prior
22 collateral attacks. This Court, and a number of other courts, have
23 already dealt with Mr. Marshall's claim that his "disciplinary
24 proceedings were conducted in a fraudulent and bad faith manner."
25 See May 23 Order at 13-24. Further, this Court has already found
26 that the lower federal courts lack jurisdiction to void Mr.
27 Marshall's disbarment, see id. at 15, which is exactly the remedy
28 that he is seeking in the Adversary Complaint. Adversary Complaint

1 at 8. Mr. Marshall's claim that WSBA violated the automatic stay
2 is also not new. It was raised in Mr. Marshall's second collateral
3 attack and expressly rejected by the bankruptcy court, ECF No. 68-6
4 at 58, the district court, id. at 80-81, and the Ninth Circuit, id.
5 at 88.

6 Accordingly, the Court DENIES Mr. Marshall's motion for leave
7 to proceed with the Adversary Complaint.

8 **C. Sanctions**

9 WSBA requests that the Court sanction Mr. Marshall in the
10 amount of \$2,000 for vexatious and wasteful litigation tactics
11 pursuant to 28 U.S.C. § 1927. Section 1927 provides: "Any attorney
12 or other person admitted to conduct cases in any court of the
13 United States . . . who so multiplies proceedings in any case
14 unreasonably and vexatiously may be required by the court to
15 satisfy personally the excess costs, expenses, and attorneys' fees
16 reasonably incurred because of such conduct." 28 U.S.C. § 1927.
17 Section 1927 sanctions require a bad faith showing and may be
18 imposed upon a pro se plaintiff, such as Mr. Marshall. Wages v.
19 Internal Revenue Serv., 915 F.2d 1230, 1235-36 (9th Cir. 1990).

20 The Court is satisfied that § 1927 sanctions are appropriate
21 here. The Adversary Complaint is Mr. Marshall's fourth collateral
22 attack on his disbarment proceedings. As set forth above, the
23 claims asserted in the Adversary Complaint do not materially differ
24 from the claims which this Court and multiple other courts rejected
25 in Mr. Marshall's previous actions. Accordingly, Mr. Marshall
26 should have been fully aware that his claims lacked merit when he
27 filed the Adversary Complaint.

28 The Court previously declined to award § 1927 sanctions in

1 conjunction with Mr. Marshall's third collateral attack, finding
2 that the "narrowly tailored pre-filing order . . . entered against
3 Marshall [wa]s sufficient." ECF No. 99 at 5. However, it is now
4 apparent that the Pre-Filing Order is not enough -- Mr. Marshall
5 continues to press his meritless claims against WSBA. Mr.
6 Marshall's bad faith is further underscored by the fact that he did
7 not seek leave of the Court until after he filed the Adversary
8 Complaint, in clear violation of the Pre-Filing Order.

9 For these reasons, the Court ORDERS Mr. Marshall to pay a
10 sanction of \$2,000 to WSBA pursuant to 28 U.S.C. § 1927.

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12 **IV. CONCLUSION**

13 For the reasons set forth above, the Court finds that
14 Plaintiff Bradley Marshall's state court action against Carl Bulmer
15 is not subject to the Court's May 23, 2012 Pre-Filing Order. The
16 Court also finds that Mr. Marshall's Adversary Complaint against
17 the Washington State Bar Association, currently pending before the
18 Bankruptcy Court for the Western District of Washington, is subject
19 to the Pre-Filing Order and DENIES Mr. Marshall's motion for leave
20 to proceed with that action. Finally, the Court finds the
21 Adversary Complaint constitutes unreasonable and vexatious
22 litigation and ORDERS Mr. Marshall to pay WSBA \$2,000 as a sanction
23 pursuant to 28 U.S.C. § 1927.

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25 IT IS SO ORDERED.

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27 Dated: November 30, 2012



28 UNITED STATES DISTRICT JUDGE